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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/730,116	12/05/2000	Robert Manuel Carmichael	10464.6803	8544

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EXAMINER

VASUDEVA, AJAY

ART UNIT PAPER NUMBER

3617

DATE MAILED: 01/31/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.
09/730,116

Applicant(s)
Carmichael

Examiner
Ajay Vasudeva

Art Unit
3617



-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136 (a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on _____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-21 is/are pending in the application.
- 4a) Of the above, claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-21 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claims _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
*See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s). _____ 6) ☐ Other:

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DETAILED ACTION

Specification

1. The specification is objected to as failing to provide proper antecedent basis for the claimed subject matter. See 37 CFR 1.75(d)(1) and MPEP § 608.01(o). Correction of the following is required: .

The side release buckle excludes hook and loop fasteners (emphasis added), as set forth in amended claims 1, 14, and 21.

Claim Rejections - 35 USC § 102

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless --

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(f) he did not himself invent the subject matter sought to be patented.

3. Claims 1, 2, 7, 8, and 12-20 are rejected under 35 U.S.C. 102(b) as being anticipated by Carmichael (542).

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Carmichael describes a buoyancy control unit (figure 2), generally as claimed, having a body member [202], a ballast receiving pocket [70], a ballast within a pouch [94], and a first strap [56] and a second strap [40] attached proximate to the pocket. The pocket overlies the second strap, and is therefore considered associated with it. A side release buckle is provided with a first section [54] and a second section [54]. A handle [101] is attached to the pouch and the ballast member.

Applicant may note that the first and second sections of the buckle are provided for the purpose of securing the belt around a user's waist, and are not associated with the process of ballast removal. Therefore, a release of the ballast from the pocket is not dependent on the first and second sections of the buckle being engaged with each other. The first the second sections are therefore capable of being disposed in a connected state prior to release of the ballast member, as set forth in claims 1 and 15.

4. Claims 1-3, 5-8, 12-14, and 21 are rejected under 35 U.S.C. 102(b) as being anticipated by Anderson ('450).

Anderson describes a buoyancy control unit (figure 3), generally as claimed, having a ballast receiving pocket [30], a ballast containing pouch [34], and a side release buckle having a first section [86] and a second section [88]. The first section [86] is attached to a first strap (*see examiner annotations in figure 3*) on the receiving pocket. The second section [84] is attached to

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a second strap [82] when the second strap is engaged with the buckle. The second strap is coupled to the pouch and constitutes a handle for pulling out the pouch.

Applicant may note that the side release buckle does not have a hook-and-loop fastener.

5. Claims 1-21 are rejected under 35 U.S.C. 102(f) because the applicant did not invent the claimed subject matter.

Applicant's amendment dated 21 June 2001 claims the application to be a continuation-in-part of the application Serial No. 09/628,836, now abandoned.

However, it is noted that the application No. 09/628,836, which discloses the exact invention as being claimed in the present application, has a different inventive entity, and additionally, has no common inventors with the present application.

Therefore, claims 1-21 are rejected in view of the invention having been made by a different inventive entity.

Further, applicant's claim of the present application as being a continuation-in-part of the application Serial No. 09/628,836 is considered to be in error, and thereby invalid.

NOTE: Examiner acknowledges receiving a petition pursuant to 37 CFR 1.181-1.183 for a permission to claim priority to application number 09/628,836 (now abandoned), which has been forwarded to the Petitions Department for a decision. However, the applicant may note that

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since a petition is not considered a reply to a rejection in an Office Action, the current 102(f) is being maintained until a decision has been granted on the petition.

Response to Arguments

6. **102(a) Rejection based on Halcyon Web-site publication**: In view of applicant's declaration, this rejection has been withdrawn.
7. **102(b) Rejection based on Carmichael**: Applicant's arguments with respect to claims 1, 2, 7, 8, 12-15, and 16-20 have been considered but are moot in view of the new ground(s) of rejection.
8. **102(b) Rejection based on Anderson**: Applicant's arguments with respect to claims 1-3, 5-8, 12-14, and 21 have been considered but are moot in view of the new ground(s) of rejection. Specifically, applicant's attention is drawn to the fact that there is no hook-and-loop fastener in the side-release buckle of Anderson.
9. **Rejection under 35 U.S.C. 102(f)**: Examiner acknowledges receiving applicant's petition for a permission to claim priority to application number 09/628,836 (now abandoned), which has

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now been forwarded to the Petitions Department for a decision. However, the applicant may note that since a petition is not considered a reply to a rejection in an Office Action, the current 102(f) is being maintained until a decision has been granted on the petition.


Allowable Subject Matter

10. In the event of a petition decision being granted in favor of the applicant, claims 4 and 9-11 would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Conclusion

11. This is a Non-Final Action.

12. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Ajay Vasudeva whose telephone number is (703) 306-5992.


S. JOSEPH MORANO
PATENT EXAMINER
NEW YORK CENTER 3600

AV

January 26, 2003